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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.941 OF 2003

Shrichand Uttamchand Bhatia ... Appellant

V/s.

The State of Maharashtra ... Respondent

Mr.Shekhar Ingawale for Appellant
Mr.P.A. Pol, APP, for Respondent

CORAM: **D.G. DESHPANDE &**
SMT.NISHITA MHATRE, JJ.

DATED: **JUNE 5, 2007**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The Appellant has preferred the Appeal against the judgment and order of the II Adhoc Additional Sessions Judge, Kalyan dated 7.6.2003. By this judgment and order, the appellant who was accused No.1 before the Sessions Court has been convicted under section 302 of the Indian Penal Code and sentenced to suffer life imprisonment and payment of fine of Rs.3000/-. The appellant has been acquitted of the offence punishable under sections 498A and 304-B r/w section 34 of the Indian Penal Code. Accused No.2, the brother of the appellant and accused No.3, the mother of accused Nos.1 and 2, have been acquitted of the offences punishable under sections 498A and 304-B r/w 34 of Indian Penal Code.

2. The case of the prosecution is that the victim

Maya and the appellant were married on 8.2.1988. Their marriage was arranged by Maya's brother, Madhav. According to the prosecution, accused No.2 in this case i.e., Nandlal, the brother of the appellant had an altercation with Madhav at the wedding reception of Maya and the appellant because Madhav had not paid an amount of Rs.500/- for certain expenses at the wedding. The appellant's brother had threatened Madhav with dire consequences if the amount remained unpaid. According to the prosecution, on the night intervening between 9.5.1988 and 10.5.1988, the victim was throttled to death by the appellant. The complainant who is the victim's brother was informed of his sister's death by Madhav and the appellant's brother in the morning of 10.5.1988. After rushing to the victim's matrimonial home alongwith other members of his family, the complainant lodged a complaint with the police since he suspected foul play. The prosecution alleges that ligature marks around the neck of the deceased were covered with some red medicine. Postmortem examination was performed on the victim's body and the Doctor opined that the death had occurred due to asphyxia on throttling. The appellant, his brother, Nandlal and his mother were arrested and arraigned for having committed offences punishable under sections 498A r/w 34, 302 r/w 34 and 304-B r/w 34 of the Indian Penal Code. The Sessions Court, Kalyan has acquitted the brother and the mother of the appellant of all the charges and has

convicted the appellant under section 302 while acquitting him of the other charges.

3. The case is based entirely on circumstantial evidence. It hinges on the question as to whether the victim had committed suicide by hanging herself as contended by the appellant or the appellant had throttled the victim, resulting in her death. We have with the assistance of the learned Advocate for the appellant and the learned Assistant Public Prosecutor perused the evidence on record and the impugned judgment. We find that the view taken by the learned Sessions Judge is correct and based on the evidence on record. However, with the view to ensure that no injustice is done to the appellant, we have independently scrutinised the entire evidence on record and have reached the same findings as those of the learned Sessions Judge.

4. The prosecution has examined six witnesses to prove its case against the appellant. PW1 is the complainant who has spoken about the marriage of Maya with the appellant being arranged by his brother, Madhav. He has also stated that he learnt from his brother that the accused used to harass Maya. He has disclosed in his evidence that on the day of the marriage, there was an heated exchange of words between Madhav and Nandlal. He had threatened Madhav and the

family with dire consequences since an amount of Rs.500/- had not been paid by the latter. The witness has stated that when he reached the victim's house at about 9 am, he noticed that she was frothing at the mouth and bleeding from the nose. He also noticed marks around the neck of the deceased on which some red medicine had been applied. The cross-examination of this witness does not in any manner discredit his deposition in the examination in chief. There are no additions or omissions in his testimony and, therefore, it is believable.

5. The next witness examined by the prosecution is Madhav, another brother of the victim. He has corroborated the evidence of the complainant regarding the demand for money made by Nandlal. Maya had visited him about 3 to 4 times after the marriage. She had spoken about the appellant disliking her and harassing her for money. According to this witness, he was informed of Maya's death between 6 and 7 am on 10.5.1988 by appellant's brother Ashok. He has stated that he reached the victim's house at about 8.30 am with his brother, mother and other members of his family. This witness has also spoken about having observed some red medicine on the neck of the deceased and that there was froth near her mouth. He has, therefore, corroborated the testimony of the complainant.

6. PW3 is the brother in law of the victim i.e., Maya's sister's husband. He has also described the state in which Maya's body was found when they rushed to the house on being informed of the death. His description matches that of PW1 and PW2.

7. PW4 is the panch witness who has proved the inquest panchanama as well as the spot panchanama. The next witness examined by the prosecution is the Investigating Officer. When he reached the spot of the incident, he found that the appellant was not at home but was present in the house throughout the night. He has denied a suggestion put to him on behalf of the appellant that the deceased was suffering from epilepsy and that on the date of the incident she was alone at home and had died accidentally during the attack of epilepsy.

8. The crucial testimony in this case is that of the Doctor who has been examined as PW6. He has described the injuries as follows:

> (1) Abrasion on the front of neck and lower surface of chin right side 2.1/2" X 1.1/2" ecchomiasis margine.
>
> (2) Bruise on the front of neck, 5" X 3" irregular in shape, redish colour, margines ecchymosis.
>
> (3) Sub-cutaneous tissue on cut-section shows ecchymosis.

The internal injuries have been described thus by this witness:

> Brain and meninges are congested. Thorax, larynx and trachea show ecchymosis on the inner surface, blood-stained for froth present in breachea and bronchoi. Both lungs congested, blood-stained froth comes out in cut section.

9. This Doctor has been cross-examined extensively on the difference between throttling and strangulation. The possibility of the victim having had an attack of epilepsy and falling on a rope like substance which strangulated her has also been suggested to PW6 while being cross-examined. The Doctor has opined that considering the nature of the injuries observed on the victim, pressure was applied on the neck only with one hand. He has denied the suggestion that the death of the victim was due to partial hanging.

10. There is one defence witness examined in this case. He claims to be residing at a distance of about 100’ away from the appellant. According to him, he went to the appellant’s house when he saw that a large crowd had gathered outside his house. He then saw the victim hanging to the ceiling fan with a cloth (dupatta) around her neck. This witness claims that the cloth was tearing under the weight of the victim’s body. He and others then placed the body on the floor. He claims that although the police had reached the spot when the

accused called them and questioned those present, the police did not interrogate him on the spot. This witness is obviously a got up witness. He has not been able to prove that he was residing close to the appellant's house. He could not identify or name the other persons present when the dead body was placed on the cot. Significantly, in the examination in chief, he has stated that the body was placed on the floor. This witness could not identify the colour of the clothes that the deceased was wearing at the time of the incident. He has stated that the room in which the victim was found hanging was admeasuring 7' X 8' and that there were no articles in the room besides one cot and a ceiling fan. When the police conducted the inquest panchanama and the spot panchanama, the body lay on the floor. The cot was placed on its side leaning against the wall. Thus, the testimony of the defence witness is not credible at all.

11. The prosecution has relied on the following circumstances to prove its case against the appellant: (i) that the appellant and the victim were married 3 months prior to the incident; (ii) that there was a quarrel between Nandlal, the appellant's brother and Madhav, the victim's brother at the wedding reception over non-payment of some amount by Madhav; (iii) the victim had complained to Madhav and his wife about the ill-treatment meted out to her by the appellant; (iv)

the victim died prior to 6 am on 10.5.1988; (v) the appellant was present in the house when she died; (vi) the conduct of the appellant in not informing the police at all about the death of the victim.

12. In our opinion, these circumstances have been proved by the prosecution. Although the circumstances considered individually might not be indicative of the appellant's guilt, taken together they form a chain which unerringly leads to the guilt of the appellant. The conduct of the appellant in not informing the police at all after the victim was found dead is suspect and leads us to the conclusion that the appellant is guilty The abrasions and bruises on the neck were sought to be covered up by applying some red medicine. The prosecution has been able to establish the motive of the appellant in doing away with his wife of three months. In our opinion, therefore, the appellant has been rightly convicted and sentenced by the Sessions Court.

13. The story of the defence that the victim suffered from epilepsy has not been proved. Neither the two brothers of the victim who were examined as PW1 and PW2 nor the victim's brother in law, PW3, have been put any suggestion in the cross-examination that the victim was suffering from epilepsy. Apart from this, merely because the victim was suffering from epilepsy, it is difficult to accept the theory that a fall on a rope

like substance would lead to the victim's death. If this is the theory which the defence wants to rely on then the story that the victim was found hanging from the ceiling fan is contradictory and, therefore, cannot be accepted. Besides, no rope was found at the scene of offence. In our view, the case of the appellant that the victim was suffering from epilepsy cannot therefore, be believed. There are no indications of the victim having committed suicide. The learned advocate for the appellant pointed out the difference between hanging and strangulation. We have already concluded that the deceased was throttled by the appellant and therefore we need not go into the difference between hanging and strangulation. We therefore have no hesitation in upholding the impugned judgment.

14. Appeal dismissed.

(D.G. DESHPANDE, J.)

(SMT.NISHITA MHATRE, J.)